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6 Attorneys for Plaintiff  
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8 IN THE UNITED STATES DISTRICT COURT  
9  
EASTERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 KENNETH JOHNSON, et al.

14 Defendants.  
15

CASE NO. 1:20-CR-00238-JLT-SKO

UNITED STATES' OPPOSITION TO KENNETH  
JOHNSON'S APPEAL OF MAGISTRATE DENIAL  
OF MOTION

DATE: June 24, 2024

TIME: 10:00 a.m.

COURT: Hon. Jennifer L. Thurston

16 The United States of America, by and through Phillip A. Talbert, United States Attorney, and  
17 Stephanie M. Stokman, Assistant United States Attorney, submits this opposition to Defendant Kenneth  
18 Johnson's Appeal of Magistrate Denial of Motion. Dkt. 1038.

19 I. **BACKGROUND**

20 On September 8, 2022, a grand jury returned a detailed Superseding Indictment against  
21 defendants charging them with participating in a RICO conspiracy in violation of 18 U.S.C. § 1962(d),  
22 and Murder in Aid of Racketeering, in violation of 18 U.S.C. § 1959. Dkt. 391, 392.

23 On March 9, 2023, this Court designated the matter complex pursuant to 18 U.S.C. §  
24 3161(h)(7)(B)(ii) due to the number of defendants, voluminous discovery, and nature of prosecution  
25 which includes capital eligible offense. Dkt. 549.

26 On May 11, 2023, a grand jury returned a detailed Second Superseding Indictment against the  
27 defendants charging them with participating in a RICO conspiracy in violation of 18 U.S.C. § 1962(d),  
28

1 Murder in Aid of Racketeering, in violation of 18 U.S.C. § 1959, and other related charges. ECF 641,  
2 656. The Second Superseding Indictment contains a detailed description of the government's theory and  
3 evidence of the Aryan Brotherhood as a criminal enterprise, including facts about its formation,  
4 membership, command structure, codes of conduct, purposes, symbols, and method and means of  
5 operation. ECF 656, at 2–5. The Second Superseding Indictment also describes defendants' roles and  
6 activities within the enterprise. ECF 656, at 5–8. The Second Superseding Indictment additionally  
7 contains information regarding the murder of four individuals, as contained in Counts Two through  
8 Three. ECF 656, at 12–18.

9 On February 14, 2024, defendant Francis Clement filed a motion requesting the return to the  
10 California Department of Corrections and Rehabilitation (CDCR) (Dkt 937), and defendant Kenneth  
11 Johnson joined said motion on February 16, 2024 (Dkt. 948).

12 On April 4, 2024, a hearing on the motion was held by the Honorable Sheila K. Oberto,  
13 Magistrate Judge for the Eastern District of California, and the motion was denied. Dkts. 1025 and  
14 1028. Defendant Johnson now appeals the denial.

15 **II. DISCUSSION**

16 A reviewing court must review a Magistrate's Order to determine if it "is clearly erroneous or  
17 contrary to law." 28 U.S.C. § 636(b)(1)(A); *see Local Rule 303(f)* ("The standard that the assigned  
18 Judge shall use in all such requests is the 'clearly erroneous or contrary to law' standard set forth in 28  
19 U.S.C. § 636(b)(1)(A)."). "To find a magistrate judge's decision 'clearly erroneous,' the district court  
20 must have a 'definite and firm conviction that a mistake has been committed.'" *Na Pali Haweo Cnty.*  
21 *Ass'n v. Grande*, 252 F.R.D. 672, 674 (D. Haw. 2008) (quoting *Burdick v. Comm'r Internal Revenue*  
22 *Serv.*, 979 F.2d 1369, 1370 (9th Cir. 1992)). "A decision is 'contrary to law' if it applies an incorrect  
23 legal standard or fails to consider an element of the applicable standard." *Na Pali Haweo Cnty. Ass'n*,  
24 252 F.R.D. at 674 (quoting *Conant v. McCoffey*, 1998 WL 164946, at \*2 (N.D. Cal. March 16, 1998)).

25 The government relies upon, and incorporates herein, the arguments stated within the opposition  
26 papers filed in response to the above-mentioned motion. Dkt. 980. The ruling by the Magistrate Judge  
27 should be upheld as defendants' motion and request to return to CDCR was properly denied when  
28 defendants did not meet their burden to demonstrate that the denial of their constitutional right to access

1 to counsel had occurred.

2                   **III.        CONCLUSION**

3                   The Magistrate Judge made a proper ruling based upon legal authority and controlling statutes.  
4 Thus, this Court should uphold the Magistrate's ruling. Additionally, the government does not believe a  
5 hearing is necessary in this matter.

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7 Dated: May 14, 2024

PHILLIP A. TALBERT  
United States Attorney

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9 By: /s/ STEPHANIE M. STOKMAN  
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11                   Assistant United States Attorney

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